

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

RECEIVED

2004 JAN 20 AM 9:48

T.R.A. DOCKET ROOM

IN RE: PETITION OF ATMOS ENERGY
CORPORATION FOR APPROVAL OF
FRANCHISE AGREEMENTS WITH
WILLIAMSON COUNTY AND
JOHNSON CITY, TENNESSEE

)
)
)
)
)
)

Docket No. 03-00520

**DIRECT TESTIMONY OF
ROBERT M. ELAM**

Q: Please state your name, place of employment and title.

A: My name is Robert M. Elam. I am employed by Atmos Energy Corporation, Mid-States Division ("Atmos") as Vice President of Operations for the Southeastern Region.

Q: In your capacity as Vice President of Operations for the Southeastern Region of Atmos, are you familiar with the natural gas distribution system operated by Atmos in Johnson City, Tennessee?

A: Yes. I am very familiar with the operation in Johnson City and the other adjoining communities that are served by the system. I was also the authorized person on behalf of Atmos to negotiate the amendment to the Franchise Agreement with Johnson City, Tennessee, that is the subject of this Petition.

Q: Please give the Authority an overall description of the Johnson City, Tennessee system and the customers served by Atmos.

A: The total number of miles of pipe in the Johnson City, Tennessee system which serves both residents inside and outside of the City is approximately 311 miles. Of the total amount of pipe, approximately 48 miles is located outside of the city limits but is interconnected and dependent upon the distribution system located within the city limits of Johnson City.

There are approximately 11,849 customers located within the city limits served by the natural gas distribution system owned and operated by Atmos. Of that amount, approximately 80% are residential customers and 20% are commercial and industrial customers. The majority of the pipeline in the Atmos distribution system in the area is located within the public rights of way of Johnson City. Without access to these public rights of way, Atmos could not adequately maintain, replace and/or operate its distribution system.

25 **Q: Has Atmos operated a natural gas transmission and distribution system in Johnson**
26 **City for a number of years?**

27 A: Yes, Atmos and its predecessors have operated for many years in Johnson City under
28 various Franchise Agreements with the City. Each of these agreements has allowed
29 Atmos to operate a gas transmission and distribution system within Johnson City and to
30 use the public rights of way of the City for its distribution system and related plant and
31 access thereto.

32 **Q: Please give a brief summary of the chronology relating to the Franchise Agreement**
33 **under which Atmos has operated in Johnson City for the past several years.**

34 A: In 1988, Johnson City, through Ordinance No. 2726, granted Atmos a franchise to use the
35 public rights-of-way for the purposes of operating and maintaining its natural gas
36 transmission system. The 1988 franchise was for a term of twenty-five years, and
37 required a franchise fee of 2% of the annual gross revenues from Atmos' sale of gas to
38 customers located within the city limits. Under Section 6 of the 1988 ordinance, the City
39 was allowed to renegotiate the franchise fee every five years. The City and Company
40 records reflect that in 1997 there were additional negotiations between Atmos and
41 Johnson City to modify the franchise fee pursuant to Section 6 of the 1988 ordinance.
42 The parties negotiated an amendment which was adopted by the Johnson City Council by
43 Ordinance No. 3511 in August, 1997. The amendment provided that the franchise fee
44 would be raised from 2% to 3% in September of 1997 and would increase by 1% each
45 year until it reached 5%. Through an oversight, however, the 1997 ordinance was not
46 submitted to Atmos for formal acceptance, nor was it filed with the Tennessee Regulatory
47 Authority. However, Atmos began collecting a 3% franchise fee in 1997, but did not
48 implement any of the subsequent increases. The 3% fee is still significantly less than the
49 franchise fees imposed in other jurisdictions where Atmos operates in Tennessee.

50 The franchise also called for the franchise fee payments to be made on an annual basis in
51 March of each year. In early 2001, Atmos, in reviewing its records, discovered that the
52 1997 franchise had not been forwarded to its representative by Johnson City's City
53 Recorder in order to be accepted by signature and also that the yearly 1% increases had
54 not been added in the billing to the customers. This was during the time of extremely
55 high wholesale natural gas prices. At that point, Atmos met with the then City Manager
56 of Johnson City, John Campbell, to discuss the franchise fee situation. Mr. Campbell
57 directed that Atmos should not attempt to increase the franchise fee over the current 3%
58 due to the significant increase in gas prices. However, both parties agreed to begin
59 negotiating several terms and conditions of the franchise, including the fee. Subsequent
60 to the meetings with Johnson City in 2001, Mr. Mike West was hired as the new City
61 Manager for Johnson City. I then met with Mr. West on a number of occasions to
62 negotiate additional terms and conditions with respect to the franchise. Mr. West was
63 interested in clarifying the franchise fee and also changing the schedule of payments from
64 yearly to quarterly payments. Atmos was also interested in extending the term of the
65 Franchise Agreement for an additional twenty-five year period from the date of
66 agreement.

67 Mr. West and I met on numerous occasions in negotiating the terms of the new franchise
68 amendment. In addition, I met with City Council members as well as participating in
69 meetings with the City Attorney and my counsel concerning the terms and conditions.
70 The parties eventually agreed to fix the franchise fee at 3%. The franchise fee payments
71 would be made on a quarterly as opposed to an annual basis and the franchise term would
72 run a full twenty-five years from the date of passage by the City of the new amendment.
73 In addition, it was agreed that the new ordinance which adopted the amendment would
74 amend and supercede Ordinance No. 3511, passed in 1997, to the extent that Ordinance
75 No. 3511 increased the franchise fee over the rate of 3% per annum. The amendment
76 also allows the City to seek to modify the franchise fee on an annual basis throughout the
77 term of the franchise subject to the approval of the Tennessee Regulatory Authority. The
78 parties also attempted to more specifically deal with the issue of identifying customers of
79 the Company who are annexed or de-annexed by the City in order to properly identify
80 them for franchise fee purposes. Under this amendment, the City is responsible for
81 sending to the Company on a quarterly basis documentation which would provide the
82 names and addresses of any customers of the Company who were annexed and/or de-
83 annexed by the City so that the Company may apply the franchise fee to said customers,
84 or remove the franchise fee in the case of a de-annexation.

85 The amendment to the franchise went through several drafts, with both sides making
86 suggested changes to the language. Once the franchise amendment was deemed
87 acceptable by both parties, it was approved by the City Council and enacted through
88 Ordinance No. 3869-03.

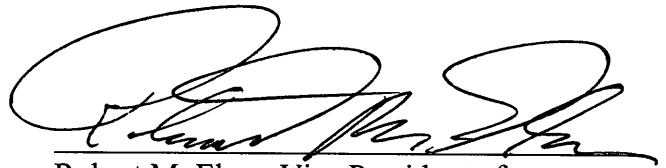
89 **Q: In summary, was the amended Franchise Agreement the product of an arms-length**
90 **negotiation process between the City and Atmos?**

91 A: Yes, as is apparent from my testimony, the City and Atmos engaged in extensive
92 negotiations over an extended period of time prior to reaching an agreement in this
93 matter. There was significant give and take on both sides during the negotiation process.

94 **Q: What is your opinion in regard to the necessity of the approval of this amendment?**

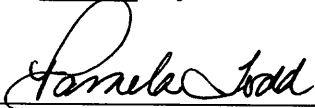
95 A: The amended Franchise Agreement is necessary and proper for the public convenience
96 and properly conserves and protects the public interest of the citizens of Johnson City
97 served by Atmos.

98 No further questions.



Robert M. Elam, Vice President of
Operations for the Southeastern Region

Sworn to and subscribed before me
this 14th day of January, 2004.



Notary Public

My Commission Expires: 05-30-04

